

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA**

HUNTINGTON DIVISION

WILLIAM L. JOHNSON

Petitioner,

v.

CIVIL ACTION NO. 3:07-cv-00469
(Criminal No. 3:02-cr-00148)

UNITED STATES OF AMERICA,

Respondent.

MEMORANDUM OPINION AND ORDER

Pending before the court are the petitioner's motions under 28 U.S.C. § 2255 to Vacate Plea and Sentence and for a Mental Evaluation [Docket 98] and to Vacate, Set Aside or Correct Sentence [Docket 103]. This action was referred to the Honorable Maurice G. Taylor, Jr., United States Magistrate Judge, for submission to this court of proposed findings of fact and recommendation ("PF&R") for disposition, pursuant to 28 U.S.C. § 636(b)(1)(B). The Magistrate Judge has submitted findings of fact and recommended that the court deny the petitioner's § 2555 motion.

Johnson has filed objections to the PF&R. His objections, however, do not relate the Magistrate Judge's proposed findings and recommendation. Rather, they express his belief that his medical condition warrants his being released from prison to community confinement. Although styled as an objection, Johnson does not present any actual objections to the PF&R.

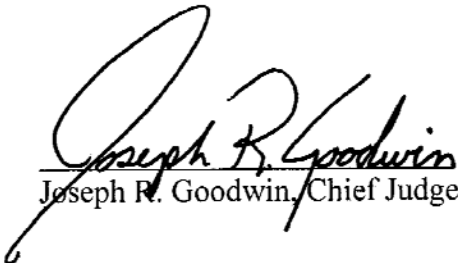
The failure to object to a magistrate judge's report may be deemed a waiver on appeal of the substance of the report and the court need only satisfy itself that there is no clear error on the face of the record in order to accept the recommendation. *See Camby v. Davis*, 718 F.2d 198, 200 (4th Cir. 1983); *Campbell v. United States D. Ct. N.D. Cal.*, 501 F.2d 196, 206 (9th Cir. 1974). The

court has reviewed the Magistrate Judge's findings of fact and recommendations and finds no clear error on the face of the record. Accordingly, the court **ADOPTS** and incorporates herein the findings and recommendation of the Magistrate Judge, and **DENIES** the petitioner's motions [Docket 98 and 103].

Additionally, the court has considered whether to grant a certificate of appealability. *See* 28 U.S.C. § 2253(c). A certificate will not be granted unless there is "a substantial showing of the denial of a constitutional right." *Id.* § 2253(c)(2). The standard is satisfied only upon a showing that reasonable jurists would find that any assessment of the constitutional claims by this court is debatable or wrong and that any dispositive procedural ruling is likewise debatable. *Miller-El v. Cockrell*, 537 U.S. 322, 336-38 (2003); *Slack v. McDaniel*, 529 U.S. 473, 484 (2000); *Rose v. Lee*, 252 F.3d 676, 683-84 (4th Cir. 2001). The court concludes that the governing standard is not satisfied in this instance. Accordingly, the court **DENIES** a certificate of appealability.

The court **DIRECTS** the Clerk to send a copy of this Order to Magistrate Judge Taylor, counsel of record, and any unrepresented party.

ENTER: December 10, 2009


Joseph R. Goodwin, Chief Judge